IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 160 of 2000

with

COMPANY APPLICATION No.215 of 2002

with

COMPANY APPLICATION No.34 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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FORTIS FINANCIAL SERCVICES LTD - Petitioner(s)

Versus

HEXONE PHARMACEUTICALS LTD. - Respondent(s)

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Appearance :

MR PC KAVINA for Petitioner No(s).: 1.

MR SA DESAI for Respondent No(s).: 1.

MR TS NANAVATI for Respondent No(s).: 1.

Mr MITUL SHELAT for Respondent No.1

COMPANY APPLICATION NO.215 of 2002

MR PRANAV G DESAI for the Applicant

OFFICIAL LIQUIDATOR for Respondent

COMPANY APPLICATIN NO.34 of 2003

MR MITUL SHELAT for the Applicant

MR PC KAVINA for Opponent

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CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date : 14/07/2005

ORAL JUDGMENT

1. The petitioner, namely, Fortis Financial Services Ltd., has filed this petition under Sections 433 and 434 of the Companies Act,1956 for winding up of the respondent Company, namely, M/s.Hexone Pharmaceuticals Ltd., on the ground that the respondent Company has failed to discharges its financial liabilities towards the petitioner.
2. It is the case of the petitioner that pursuant to the request made by the respondent Company and pursuant to the various meetings and negotiations on terms of respective agreements, two separate lease agreements dated 28.1.1994 and 7.5.1994 were entered into between the petitioner and the respondent company. The petitioner being lessor has leased the machineries and equipments to the Company i.e lessee in consideration of lease rentals for a period of 5 years. Under the lease agreement 28.1.1994 machineries and equipments worth Rs.15,17,618/- were leased in consideration of total repayment of Rs.23,97,832/- which were to be made within 5 years. Similarly under the Lease Agreement dated 7.5.1994, machineries and equipments worth Rs.1520,220/- were leased in consideration of total repayment of Rs.23,56,351/- which were to be made within 5 years. The respondent Company has failed to make the said payment to the petitioner despite the repeated demands made by the petitioner. The petitioner, therefore, issued statutory notice to the respondent Company on 1.10.1999. Despite the receipt of the said notice, the respondent Company failed to discharge its financial liabilities towards the petitioner. The petitioner, thereafter, filed the winding up petition before this Court.
3. The Court has issued notice on 21.6.2000. Thereafter, the petition was admitted on 12.7.2000 and order regarding advertisement of the petition was also passed on the same day and the petitioner was

directed to publish the advertisement in English daily “Indian Express” Baroda Edition and Gujarati daily “Gujarat Mitra” Surat Edition and also in Government Gazette.

4. After the order of advertisement was passed and advertisement was published in Newspapers and Government Gazette as directed by this Court, the respondent Company has filed its detailed affidavit on 15.3.2001. Several contentions were raised by the respondent Company in the said affidavit. The stand was taken by the Company that the Company has not committed breach of any conditions and that there are no justifiable reasons for winding up of the respondent Company. The respondent Company has, thereafter, filed another affidavit on 30.1.2002, wherein assurance was given to make the payment to the petitioner. The petitioner has also filed affidavit in rejoinder on 4.2.2002, wherein it was made clear that the proposal of the respondent Company was not acceptable to the petitioner and that the O.L be directed to take immediate possession of the assets of the respondent Company and to forthwith hand over the possession of the leased assets to the petitioner. The respondent Company, thereafter, filed further affidavit on 14.3.2002, wherein it is stated that the management has made all genuine and bonafide efforts to start production as the closure of the Company would amount to economic death of the Company. The respondent Company, thereafter, filed further affidavit on 14.6.2003.
5. During the pendency of the petition before this Court several advocates were changed by the respondent Company. Earlier Mr.S.A. Desai, learned advocate was appearing on behalf of the respondent Company. Thereafter Mr.T.S.Nanavati, learned advocate was appearing on behalf of the respondent Company and lastly, Mr.Mitul Shelat, learned advocate is appearing on behalf of the respondent Company. The Court has passed several orders on earlier occasions on the basis of assurances and promises given by the respondent Company. However, the same were not fulfilled by the Company. After considering the submissions made by Mr.P.C.Kavina, learned advocate appearing for the petitioner this Court has earlier passed an order on 13.12.2001 to the effect that if the respondent Company failed to make the payment to the petitioner, the Court would pass the appropriate order for appointment of the O.L in the matter. Thereafter this Court has passed further order on 20.12.2001 appointing the O.L attached to this Court as the Provisional Liquidator of the Company and he was directed to take charge of the assets of the respondent he Company. An attempt was made by the respondent Company to pursued this Court to revoke the order of appointing the Provisional Liquidator, and to

hand over the possession back to the respondent company. However, the said attempt was failed and this Court has passed an order on 8.5.2002 and held that it was not possible for this Court to direct the O.L to hand over the possession of the properties and the assets of the respondent company without having any materials on record to show as to how and in what manner the respondent Company would like to revive the said unit. As and when the matter was listed the request was to be made for taking up the possession. The Court has given ample opportunities to the respondent Company and several orders were passed on different dates i.e. 6.4.2005, 13.5.2005, 15.6.2005 and 13.7.2005. This Court has made it very clear on 6.4.2005 that three advocates have been changed in these matters and yet the dues of the petitioners were not paid nor the matters were proceeded. The Court has, therefore, given the last chance to the respondent and made it clear that on the next date of hearing if nobody appeared on behalf of the respondent Company appropriate order would be passed. Again on 13.5.2005 the Court has made it clear that only with a view to test bonafide of the respondent Company, the respondent Company is hereby directed to make the payment of Rs.5 lacs to the petitioning creditor on or before the next date of hearing, failing which appropriate order would be passed. The matter was adjourned to 15.6.2005. On 15.6.2005, the respondent Company has issued a cheque of Rs.5 lacs in favour of the petitioner, and the same was handed over by Mr.Mitul Shelat, learned advocate appearing for the respondent Company to Mr.P.C.Kavina, learned advocate appearing for the petitioner. The cheque was of 21.6.2005 and hence it would take some time for clearance and, therefore, the matter was kept on 13.7.2005. On 13.7.2005 the Court was informed that cheque of Rs.5 lacs given by the respondent Company to the petitioner was bounced for insufficient funds and xerox copy of the cheque, cheque return memo and Bank Advice were produced on record.

6. From the foregoing facts, it becomes very obvious that the respondent Company has totally lost its financial substratum. For the last more than 5 years respondent the Company has been making false promises that the payment would be made and necessary arrangements were in progress and negotiations were also taken place between the Company and the other parties, who were interested to run the business. However, nothing was materialised and cheques issued by the respondent Company were also bounced. The O.L is incharge of the assets of the Company and due to the security charges and other expenses liabilities of the Company were mounting up. The Company is in such a situation that it is practically impossible for the Company

to revive or restart the business of the Company. Unless and until the dues and liabilities which were mounted up over the years are discharged, the Company would not be in a position to get back the possession and to start its business activities.

7. Considering all the aspects of the matter, the Court is of the opinion that the respondent Company has totally failed to discharge its financial liabilities and it is not in the interest of creditors and members or in public interest to allow such Company to start or to carry on business. The Company is, therefore, ordered to be wound up. The Official Liquidator attached to this Court is appointed as Liquidator of the Company and he is directed to exercise all the powers conferred upon him under the provisions of Companies Act, 1956. Since he is in possession of the assets of the Company no order is required to that effect. However, he is directed to constitute Sale Committee and institute the proceedings for disposal of the assets of the Company. The O.L is further directed to invite claims of the creditors as well as workers and file appropriate report before the Court showing the latest position with regard to assets and liabilities of the Company.
8. With the aforesaid directions and observations this Company Petition is disposed off as allowed.
9. In view of the order passed by this Court in Company PetitionNo.160/2000, Company Application No.34/2003 moved by the respondent Company for stay of the further proceeding in Company Application No.18/2003 would not survive and accordingly the said application is disposed off.
10. Company Application No.215/2002 is filed by State Bank of Saurashtra, seeking directions from this Court to the O.L not to take possession of the movable and immovable properties of the Company. However, the O.L has already taken the possession and hence there is no question of restraining the O.L from taking possession of assets of the Company. More over, in view of the final winding up order passed by this Court in Company Petition No.160/2000 the said prayer no longer survive. It is open for the applicant – Bank either to move fresh application for possession or to lodge its claim with proof of debt before the O.L and necessary disbursement will take place only after the realisation of the assets of the Company in liquidation. In above view of the matter, Company Application No.215/2002 is accordingly disposed off.

(K.A.PUJ, J.)

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